

(2005) 02 AHC CK 0055

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 53456 of 2003

Sobha Singh

APPELLANT

Vs

Udai Bhan Singh, Chanda Khelawan, Kurtin and Baura
Khelawan

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Specific Relief Act, 1963 — Section 38(1)(3)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 33

Citation : (2005) 2 AWC 1743 : (2005) 3 ESC 1890 : (2005) 98 RD 442 :
(2005) 1 RD 442

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Rishikesh Tripathi, for the Appellant; Birendra Singh, Ajay Singh and
Jamal Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Rishikesh Tripathi on behalf of the petitioner and Jamal Ahmad on behalf of respondent Nos. 1 to 4.

2. Petitioner Sobha Singh filed Original Suit No. 529 of 1993 for mandatory injunction for dispossession of the defendants from the house and Maveshikhana situate at Plot Nos. 323, 324, 325, 326 and 343 village and post Makari, Tehsil Atarra, District Banda

3. In the said suit issue no. 10 was framed to the effect whether the disputed property is an agriculture land. For the purpose of decision of the aforesaid issue, the trial court referred the matter u/s 33(i)(a) of the U.P. Zamindari Abolition and Land Reforms Act to the Assistant Collector Atarra, Banda. The Assistant Collector, Atarra by means of his order dated 10.6.2002, after hearing the parties, answered the reference holding therein that the land covered by Plot Nos. 323, 324, 325, 326 and 343 is an agricultural land. In view of the aforesaid order of the Assistant Collector, the trial court decided issue no. 10 and held that

the land covered by the Plot Nos. 323, 324, 325, 326 and 343 is an agriculture holding.

4. Thereafter the trial court decided the issue no. 9, which was to the following effect:

Whether the suit is triable by the Civil Court.

5. The trial court by means of order dated 21st December, 2002, held that the suit is not triable by the Civil Court and the proper remedy for the plaintiff was to initiate proceedings under the provisions of the U.P. Zamindari Abolition and Land Reforms Act and for the said purpose the plaint was returned for presentation before the competent court of law. Feeling aggrieved by the aforesaid order of the trial court dated 21st December, 2002, petitioner preferred an appeal before the learned District Judge, Banda. The appeal was numbered as Misc. Appeal No. 5/03; Sobha Singh v. Udai Bhan Singh and others. The First Appellate Court has affirmed the findings recorded by the trial court and directed that the suit was not cognizable by the Civil Court and plaint has rightly been returned for presentation before the competent court having jurisdiction (Revenue Court). It is against the aforesaid orders, the present writ petition has been filed.

6. On behalf of the petitioner it is contended that both the courts below have failed to take into consideration the relief prayed for in the plaint. According to petitioner the relief prayed for in the plaint was confined to the injunction qua to the house and Maveshikhana, which are situate at Plot Nos. 323, 324, 325, 326 and 343. It is stated that the plaintiff has not prayed for any relief in respect of the agriculture holding. It is further submitted that the relief of eviction of defendant and possession to the plaintiff in respect of the residential house and Maveshikhana can be granted by the Civil Court only and therefore the suit as filed by the plaintiff is legally maintainable.

7. On behalf of the respondent it is submitted that the Plot Nos. 323, 324, 325, 326 and 343 had not been declared Abadi and therefore the relief sought for by the plaintiff virtually amounts declaration that he was owner of said plots and therefore entitled to possession. According to defendant, such a relief can be granted in the proceedings initiated in the competent revenue court in accordance with the provisions of the U.P. Zamindari Abolition and Land Reforms Act.

8. I have heard counsel for the parties and have gone through the records of the writ petition.

9. In order to appreciate the controversy raised in the present writ petition, it would be worthwhile to mention the relief prayed for by the plaintiff petitioner in the suit, which read as follows:

^^?v? ;g fd okn csn[kyh drbZ izfroknhx.k oknh dks dCtk o n[ky xkVk la[;k 323, 324, 325, 326 o 343 fLFkfr xzke edjh ijxuk vrjkZ ftyk ckank eqUntsZ uD"kk okn i= jgk;"kh edku o eos"kh[kkuk oknh esa fnyk;k tk;sA

?c? ;g fd mDr eqdnek vkns''k oknh ds i{k esa fd;k tk;sA

?l? ;g fd [kpZ ctj;s odhy izfroknhx.k ls oknh dks fnyk;k tk;sA

10. From a bare reading of the relief so prayed by the plaintiff, it is apparently clear that he has prayed for eviction of the defendants from house and the Maveshikhana and for possession of the same being restored to the petitioner only. He has mentioned that the house and Maveshikhana are situate in Plot Nos. 323, 324, 325, 326 and 342 but, in fact in, respect of the agriculture land he has not prayed for any relief for possession in the said plaint. From the relief as has been prayed in the plaint, it is apparently clear that such a relief can be granted by the Civil Court only and the Revenue Court has no authority of law to grant such a relief of dispossession of the defendants and possession of the plaintiff over the house and Maveshikhana only, situate on agricultural land. The nature of the land on which the constructions are standing in the shape of house and Maveshikhana are irrelevant for deciding the competence of the civil court to decide the Suit. It is immaterial whether the land on which the house and Maveshikhana exist has been declared as abadi or not.

11. In the opinion of the Court, the Revenue Court has no jurisdiction to grant the relief as has been prayed for by the plaintiff in the aforesaid suit and the relief can only be granted by the competent court of jurisdiction in civil proceedings. Reference- Section 38(1)(3) of the Specific Reliefs Act. Reference may also be had to the judgment of this Court reported in Nandey Vs. The Board of Revenue and Others, , wherein this Court has held that the relief for demolition can only be granted by the Civil Court. The nature of the land, over which the house and Maveshikhana are situate, are not relevant for the purposes of deciding the jurisdiction of the court to grant the relief in the facts of the case.

12. In view of the aforesaid, writ petition is allowed. The order dated 1.10.2003 is hereby quashed. The suit, as filed by the plaintiff, is pending consideration since 1993. It is, therefore, directed that the trial court may decide the said suit at the earliest possible, preferably within six months from the date a certified copy of this order is filed before the trial court.